

1 MELINDA S. RIECHERT, State Bar No. 65504  
 2 MORGAN, LEWIS & BOCKIUS LLP  
 3 2 Palo Alto Square  
 4 3000 El Camino Real, Suite 700  
 5 Palo Alto, CA 94306-2122  
 6 Tel: 650.843.4000  
 7 Fax: 650.843.4001  
 8 Email: [mriechert@morganlewis.com](mailto:mriechert@morganlewis.com)

9  
 10 Attorney for Defendant  
 11 NEW YORK LIFE INSURANCE COMPANY

12  
 13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 ARELENE BENIGNI,

17 Plaintiff,

18 vs.

19 NEW YORK LIFE INSURANCE  
 20 COMPANY, and DOES 1 through 10,

21 Defendants.

CV Case No. 08

3110

NOTICE OF REMOVAL OF ACTION  
 28 U.S.C. SECTIONS 1332 AND 1441(b) -  
 29 DIVERSITY OF CITIZENSHIP

EMC

30 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1332, Defendant NEW  
 31 YORK LIFE INSURANCE COMPANY ("NYLIC" or "Defendant") hereby removes the above-  
 32 entitled action from the Superior Court of the State of California, County of Contra Costa, to the  
 33 United States District Court for the Northern District of California. Removal is based on the  
 34 following grounds:

35 1. On or about April 21, 2008, Plaintiff Arelene Benigni ("Plaintiff") commenced  
 36 this action in the Superior Court of the State of California in and for the County of Contra Costa,  
 37 entitled *Arelene Benigni v. New York Life Insurance, and Does 1 to 10 inclusive*, Case No. C-08-  
 38 01088 (the "Complaint"), against Defendant, alleging causes of action for: (1) disability  
 39 discrimination in violation of California Government Code §§ 12940 et seq.; and (2) retaliation in  
 40 violation of California Government Code §§ 12940 et seq. A true and correct copy of the  
 41 Complaint and Summons, with the accompanying attachments, is attached hereto as Exhibit 1.

1           2.     On May 30, 2008, Plaintiff caused the Complaint and Summons to be served on  
 2 Defendant.

3           3.     On June 20, 2008, Defendant filed and served its Answer to Plaintiff's unverified  
 4 complaint ("Answer"). A true and correct copy of Defendant's Answer is attached hereto as  
 5 **Exhibit 2**. The Summons, Civil Case Cover Sheet, Complaint and the Answer (attached hereto  
 6 as Exhibits 1 and 2) constitute all process, pleadings and orders filed in this case, that have been  
 7 filed in this action.

8           4.     This Notice of Removal is timely filed, pursuant to 28 U.S.C. § 1446(b), in that it  
 9 is filed within thirty (30) days of receipt of Plaintiff's Complaint. No previous Notice of  
 10 Removal has been filed or made with this Court for the relief sought.

11          5.     This action is a civil action over which this Court has original diversity jurisdiction  
 12 pursuant to 28 U.S.C. § 1332, and this matter may be removed to this Court under the provisions  
 13 of 28 U.S.C. § 1441(a) and (b) in that the amount in controversy exceeds \$75,000, exclusive of  
 14 interest and costs, the action involves citizens of different States, and no defendant is a citizen of  
 15 California.

16          6.     Complete Diversity

- 17           (a)    Complete Diversity between Plaintiff and Defendant exists under 28  
 18                U.S.C. § 1332, because Plaintiff and Defendant are citizens of different  
 19                states.
- 20           (b)    At the time Plaintiff files this civil action, Plaintiff was a California citizen.  
 21                [Complaint ¶ 1.]
- 22           (c)    Pursuant to 28 U.S.C. § 1332(c)(1), a corporation is deemed to be a citizen  
 23                in any state in which it has been incorporated and of any state where it has  
 24                its principal place of business. Defendant is, and at all relevant times was,  
 25                a corporation formed under the laws of the state of New York, and its  
 26                principal place of business is in the state of New York.

27          7.     The Ninth Circuit uses a two-step analysis to determine a corporation's principal  
 28 place of business. *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495 (9th Cir. 2001).

1 First, the court determines whether a substantial predominance of the corporation's "place of  
 2 operations" takes place in one state. *Id.* at 500. Second, if the corporation conducts business in  
 3 many states and does not conduct a substantial predominance of its business in any single state,  
 4 the court uses a "nerve center" test. *Danjaq, S.A. v. MGM/UA Commc 'ns Co.*, 773 F.Supp. 194,  
 5 199 (C.D. Cal. 1991).

6 8. NYLIC's principal place of operations is in New York State. The Ninth Circuit  
 7 looks to five factors to determine whether a substantial predominance of corporate activity occurs  
 8 in a given state: (1) location of employees; (2) location of tangible property; (3) location of  
 9 production activity; (4) relative sources of income; and (5) where sales take place. *Tosco*, 236  
 10 F.3d at 500. An analysis of each of the relevant factors shows that New York State is the locale  
 11 of NYLIC's principal place of operations. First, of the 15,358 individuals employed by NYLIC,  
 12 4,837 are employed in New York, constituting 31% of its entire workforce. *Declaration of*  
 13 *Bonnie J. Shenkman* ("Shenkman Decl."), ¶¶ 2-3. Only 1,419, or 9%, of NYLIC's employees  
 14 work in California, over three times fewer than those employed in New York. *See Shenkman*  
 15 *Decl.*, ¶ 3. Second, NYLIC holds \$453,204,790 in tangible property and real estate in the United  
 16 States. *Declaration of Angelo Scialabba* ("Scialabba Decl."), ¶ 3. The total value of the  
 17 property located in New York is \$252,700,277, or over 55% of its total holdings. *Scialabba*  
 18 *Decl.*, ¶ 3. The amount of property held in California, valued at \$1,761,984, does not even  
 19 account for 1% of NYLIC's real estate assets. *Scialabba Decl.*, ¶ 4. Third, NYLIC obtains  
 20 significantly more premiums and sales from New York than from California. In fact, the  
 21 premiums for insurance policies and annuities sold out of New York tripled the amount sold from  
 22 California in 2007. *See Declaration of Kenneth Roman* ("Roman Decl."), ¶ 3. NYLIC's New  
 23 York sales totaled \$2,238,512,345 in 2007, while California sales equaled just \$740,495,588.  
 24 *Roman Decl.*, ¶ 3.

25 9. New York is also NYLIC's principal place of business under the "nerve center"  
 26 test because "the majority of its executive and administrative functions are performed" there. *See*  
 27 *Tosco*, 236 F.3d at 500. NYLIC is an insurance company organized and existing under and by  
 28 virtue of the laws of the State of New York. *Declaration of Cynthia J. Lenkiewicz* ("Lenkiewicz

1 *Decl.* ¶ 2. NYLIC's corporate headquarters are in New York, and its corporate books and  
 2 records are located in New York. *Lenkiewicz Decl.*, ¶ 3. The chairman of the Board of Directors,  
 3 the president, the chief executive officer, the chief legal officer, the corporate secretary and the  
 4 treasurer of NYLIC all work primarily out of NYLIC's corporate offices in New York.  
 5 *Lenkiewicz Decl.*, ¶ 4. Based on these facts, NYLIC's "nerve center" is New York State which is  
 6 therefore its principal place of business.

7 10. Under 28 U.S.C. § 1441(a) the citizenship of defendants sued under fictitious  
 8 names shall be disregarded. The inclusion of "Doe" defendants in Plaintiff's state court  
 9 complaint has no effect on removability. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91  
 10 (9th Cir. 1998); 28 U.S.C. § 1441 (a) (stating that for purposes of removal, the citizenship of  
 11 defendants sued under fictitious names shall be disregarded). In determining whether diversity of  
 12 citizenship exists, only the named defendants are considered. *Id.*

13 11. Although the Complaint does not allege a damages amount as to each claim,  
 14 removal is proper if, from the allegations of the Complaint and the Notice of Removal, it is more  
 15 likely than not that amount in controversy exceeds \$75,000. *Sanchez v. Monumental Life Ins.*  
 16 *Co.*, 102 F. 3d 398, 403-04 (9th Cir. 1996); *Luckett v. Delta Airlines, Inc.*, 171 F. 3d 295, 298 (9th  
 17 Cir. 1999).

18 12. Defendant is informed and believes that the amount in controversy exceeds the  
 19 sum or value of \$75,000, exclusive of interests and costs. Plaintiff alleges in her Complaint that  
 20 starting in November 2006, she requested that Defendant return her to her former position with  
 21 reasonable accommodations in accordance with her medical restrictions, and that Defendant  
 22 refused to do so. [Complaint ¶ 15]. Plaintiff also alleges that starting in 2006 she applied for  
 23 open positions at Defendant and that Defendant did not return her to work. [Complaint ¶ 17,  
 24 ¶ 18.] Plaintiff alleges that by refusing her to return to work from 2006 to the present, she was  
 25 subject to discrimination and retaliation because of her disability. [Complaint ¶ 23.] She alleges  
 26 that as a result, she has suffered substantial losses, earnings and job benefits. [Complaint ¶ 24.]

27 13. Plaintiff's position at Defendant was paying \$26,801 at the time she took a leave  
 28 of absence. *Declaration of Karen Solenick ("Solenick Decl.")*, ¶ 2. In 2006, when Plaintiff was

1 released by her physician to return to work, Plaintiff expressed some interest in positions with  
 2 Defendant offering annual salaries between \$28,000.00 and \$34,000. *Solenick Decl.* ¶ 3. Thus,  
 3 Plaintiff is seeking lost wages to date of between \$44,333 and \$53,833 for the 19 months since  
 4 she was released by her doctor to return to work, plus lost benefits.

5 14. Plaintiff also alleges that she suffered humiliation, embarrassment, mental and  
 6 emotional distress in an unspecified amount. [Complaint ¶ 24.] Courts have held that such  
 7 allegations alone are sufficient to satisfy the amount in controversy requirement. *See Egan v.*  
 8 *Premier Scales & Sys.*, 237 F. Supp. 2d 774, 776 (W.D. Ky. 2002) (where plaintiff sought  
 9 damages for embarrassment, humiliation, and willful, malicious and outrageous conduct, the  
 10 court held that the defendant could “easily make the case that the claims are more likely than not  
 11 to reach the federal amount in controversy requirement”).

12 15. Plaintiff also seeks to recover attorney fees in an amount to be determined at trial.  
 13 Under California Government Code § 12965(b), attorneys’ fees for cases brought under  
 14 California’s Fair Employment and Housing Act are authorized. Courts have held that an award of  
 15 attorneys’ fees, if such fees are authorized, may be considered for purposes of calculating the  
 16 amount in controversy. *Ansley v. Metro. Life Ins. Co.*, 215 F.R.D. 575, 577 (D. Ariz. 2003).

17 16. Plaintiff’s Prayer for Relief requests an additional amount in punitive damages for  
 18 both causes of action. In addition to compensatory damages, Plaintiff’s claims for punitive  
 19 damages are part of the amount in controversy when determining diversity jurisdiction. *Gibson v.*  
 20 *Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001). California juries have returned verdicts with  
 21 substantial punitive damage awards in employment discrimination actions. *See Simmons v. PCR*  
 22 *Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002) (“the jury verdicts in these cases amply  
 23 demonstrate the potential for large punitive damage awards in employment discrimination  
 24 cases”); *see also Aucina v. Amoco Oil Co.*, 871 F. Supp. 332, 334 (S.D. Iowa 1994) (“Because the  
 25 purpose of punitive damages is to capture the defendant’s attention and deter others from similar  
 26 conduct, it is apparent that the plaintiff’s claim for punitive damages alone might exceed [the  
 27 jurisdictional amount].”).

28

1       17. The pleadings attached to this Notice as Exhibit 1 constitute all the process,  
 2 pleadings, and orders filed in this action in Contra Costa County Superior Court of which  
 3 Defendants have served or been served to date.

4       18. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a), because this  
 5 district embraces the county in which the removed action has been pending.

6       19. Defendants will promptly serve Plaintiff with this Notice of Removal and will  
 7 promptly file a copy of this Notice of Removal with the clerk of the state court in which the  
 8 action is pending, as required under 28 U.S.C. § 1446(d).

9       20. This removal is being filed on behalf of all Defendants who have been named and  
 10 served in the state court action.

11       WHEREFORE, pursuant to these statutes and in accordance with the procedures set forth  
 12 in 28 U.S.C. § 1446, Defendants pray that the above-captioned action pending in the Superior  
 13 Court of the State of California in and for the County of Contra Costa be removed therefrom to  
 14 this Court.

15  
 16 Dated: June 26, 2008

MORGAN, LEWIS & BOCKIUS LLP

17  
 18 By Melinda S. Riechert  
 19 Melinda S. Riechert

20       Attorney for Defendant  
 21       NEW YORK LIFE INSURANCE  
 22       COMPANY

1 MELINDA S. RIECHERT, State Bar No. 65504  
2 MORGAN, LEWIS & BOCKIUS LLP  
2 Palo Alto Square  
3 3000 El Camino Real, Suite 700  
Palo Alto, CA 94306-2122  
Tel: 650.843.4000  
Fax: 650.843.4001  
Email: [mrieghert@morganlewis.com](mailto:mrieghert@morganlewis.com)

6 Attorneys for Defendant  
7 NEW YORK LIFE INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 ARELENE BENIGNI,

Case No. \_\_\_\_\_

11 Plaintiff,

12 vs.  
13 **DECLARATION OF BONNIE J.  
SHENKMAN IN SUPPORT OF  
DEFENDANT NEW YORK LIFE  
INSURANCE COMPANY'S NOTICE OF  
REMOVAL OF ACTION**

14 NEW YORK LIFE INSURANCE  
15 COMPANY, and DOES 1 through 10,  
inclusive,

16 Defendants.

17  
18 I, Bonnie J. Shenkman, hereby declare as follows:

19 1. I am a Corporate Vice President of Project Management in Human Resources for  
20 New York Life Insurance Company ("NYLIC"), the named Defendant in this action. In this  
21 position, I have supervisory responsibility for human resource functions for NYLIC. My staff  
22 compiled information regarding the number of NYLIC's employees and agents in the United  
23 States. If called to testify, I could and would competently testify to the following.

24 2. As of December 31, 2007, NYLIC "employed" 15,358 employees and agents  
nationwide.

25  
26 3. The top five states by number of employees are: (1) New York - 4,837; (2)  
27 California - 1,419; (3) New Jersey - 1,157; (4) Texas - 1,014; and (5) Florida - 892.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Executed this 23 day of June 2008 at New York, New York.

4  
5   
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6 Bonnie J. Shenkman

1 MELINDA S. RIECHERT, State Bar No. 65504  
2 MORGAN, LEWIS & BOCKIUS LLP  
2 Palo Alto Square  
3 3000 El Camino Real, Suite 700  
3 Palo Alto, CA 94306-2122  
4 Tel: 650.843.4000  
4 Fax: 650.843-4001  
5 Email: [mriechert@morganlewis.com](mailto:mriechert@morganlewis.com)

6 Attorneys for Defendant  
6 NEW YORK LIFE INSURANCE COMPANY

7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 ARELENE BENIGNI,

11 Case No. \_\_\_\_\_

12 Plaintiff,

13 vs.  
14 DECLARATION OF ANGELO  
15 SCIALABBA IN SUPPORT OF  
16 DEFENDANT NEW YORK LIFE  
17 INSURANCE COMPANY'S NOTICE OF  
18 REMOVAL OF ACTION

19 NEW YORK LIFE INSURANCE  
20 COMPANY, and DOES 1 through 10,  
21 inclusive,

22 Defendants.

23 I, Angelo Scialabba, hereby declare as follows:

24 1. I am a First Vice President in the Controller's Department for New York Life  
25 Insurance Company ("NYLIC"), the named Defendant in this action. In this position, I have  
supervisory responsibility for tracking the real estate owned by NYLIC. I directed my staff to  
compile information regarding the value of the real estate owned by NYLIC as of December 31,  
2007. If called to testify, I could and would competently testify to the following.

26 2. As of December 31, 2007, NYLIC directly owned tangible property/real estate in  
27 the United States valued at \$453,204,790.

28 3. The top five states total property value are: (1) New York - \$252,700,277; (2)  
Pennsylvania - \$44,368,794; (3) Georgia - \$41,407,655; (4) New Jersey - \$38,303,030; and (5)

1 Ohio - \$36,142,567. These are all property either occupied by NYLIC or held for income  
 2 purposes.

3 4. NYLIC owns only four residential properties in California, valued at \$1,761,984,  
 4 which are currently held for sale.

5 5. In addition, NYLIC indirectly owns \$187,751,435 in real estate in 17 states, none  
 6 of which is California.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is  
 8 true and correct.

9 Executed this 23 day of June 2008 at New York, New York.

10  
 11   
 12 Angelo Scialabba

1 MELINDA S. RIECHERT, State Bar No. 65504  
 2 MORGAN, LEWIS & BOCKIUS LLP  
 2 Palo Alto Square  
 3 3000 El Camino Real, Suite 700  
 3 Palo Alto, CA 94306-2122  
 4 Tel: 650.843.4000  
 4 Fax: 650.843-4001  
 5 Email: [mriegert@morganlewis.com](mailto:mriegert@morganlewis.com)

6 Attorneys for Defendant  
 6 NEW YORK LIFE INSURANCE COMPANY

7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10

11 ARELENE BENIGNI,  
 12 Plaintiff,  
 13 vs.  
 14 NEW YORK LIFE INSURANCE  
 15 COMPANY, and DOES 1 through 10,  
 inclusive,  
 16 Defendants.

17 Case No. \_\_\_\_\_

18

19 **DECLARATION OF KENNETH ROMAN  
 20 IN SUPPORT OF DEFENDANT NEW  
 21 YORK LIFE INSURANCE COMPANY'S  
 22 NOTICE OF REMOVAL OF ACTION**

23

24 I, Kenneth Roman, hereby declare as follows:

25

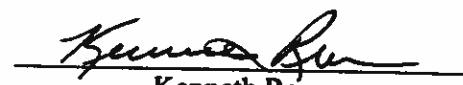
26 1. I am a Corporate Vice President in the Controller's Department for New York Life  
 27 Insurance Company ("NYLIC"), the named Defendant in this action. In this position, among  
 28 other things, I have supervisory responsibility for the reporting of premiums and sales data for  
 NYLIC. One of my functions is the supervision of compilation of Schedule T, which is an  
 exhibit to Quarterly and Annual Statements produced by NYLIC. The Schedule contains year-to-  
 date premium and annuity information by states and territories. The information provided in  
 paragraphs 2 and 3 below comes from the Schedule T produced for the year ended December 31,  
 2007. If called to testify, I could and would competently testify to the following.

1           2. In 2007, NYLIC collected a total of \$7,349,826,542 in premiums from life,  
 2 accident and health insurance policies, and annuities in the United States. This includes  
 3 American Samoa, Guam, Puerto Rico, the U.S. Virgin Islands and the Northern Mariana Islands.

4           3. The top five states by dollars are: (1) New York - \$2,238,512,345; (2) California -  
 5 \$740,495,588; (3) Texas - \$324,923,357; (4) Massachusetts - \$323,135,897; and (5) Delaware -  
 6 \$282,362,506.

7           I declare under penalty of perjury under the laws of the United States that the foregoing is  
 8 true and correct.

9           Executed this 23<sup>rd</sup> day of June 2008 at New York, New York.

10             
 11           Kenneth Roman

28

1 MELINDA S. RIECHERT, State Bar No. 65504  
2 MORGAN, LEWIS & BOCKIUS LLP  
2 Palo Alto Square  
3 3000 El Camino Real, Suite 700  
3 Palo Alto, CA 94306-2122  
4 Tel: 650.843.4000  
4 Fax: 650.843-4001  
5 Email: [mriechert@morganlewis.com](mailto:mriechert@morganlewis.com)

6 Attorneys for Defendant  
6 NEW YORK LIFE INSURANCE COMPANY

7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10

11 ARELENE BENIGNI,  
12 Plaintiff,  
13 vs.  
14 NEW YORK LIFE INSURANCE  
15 COMPANY, and DOES 1 through 10,  
inclusive,  
16 Defendants.

Case No. \_\_\_\_\_

17

18 DECLARATION OF CYNTHIA J.  
19 LENKIEWICZ IN SUPPORT OF  
DEFENDANT NEW YORK LIFE  
INSURANCE COMPANY'S NOTICE OF  
REMOVAL OF ACTION

20 I, Cynthia J. Lenkiewicz, hereby declare as follows:

21 1. I am an Associate General Counsel & Assistant Secretary for New York Life  
22 Insurance Company ("NYLIC"), the named Defendant in this action. Based on my position, my  
experience and my review of relevant corporate documents, I could and would competently  
testify to the following.

23 2. NYLIC was on April 22, 2008, and still is, a mutual insurance company organized  
24 and existing under and by virtue of the laws of the State of New York.

25 3. NYLIC's corporate headquarters was on April 22, 2008, and still is, in New York,  
26 New York and its corporate books and records are located in New York, New York.

1           4. The chairman of the Board of Directors, the president, the chief executive officer,  
2 the chief legal officer, the chief administrative officer, the chief financial officer, the chief  
3 information officer, the general auditor, the chief investment officer, the chief actuary, the  
4 corporate secretary and the treasurer of NYLIC all work primarily out of NYLIC's corporate  
5 offices in New York, New York.

6

7           I declare under penalty of perjury under the laws of the United States that the foregoing is  
8 true and correct.

9           Executed this 25<sup>th</sup> day of June 2008 at New York, New York.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

  
Cynthia J. Lenkiewicz

1 MELINDA S. RIECHERT, State Bar No. 65504  
2 MORGAN, LEWIS & BOCKIUS LLP  
2 Palo Alto Square  
3 3000 El Camino Real, Suite 700  
3 Palo Alto, CA 94306-2122  
4 Tel: 650.843.4000  
4 Fax: 650.843.4001  
5 Email: [mriechert@morganlewis.com](mailto:mriechert@morganlewis.com)

5  
6 Attorneys for Defendant  
6 NEW YORK LIFE INSURANCE COMPANY

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 ARELENE BENIGNI,  
12 Plaintiff,  
13 vs.  
14 NEW YORK LIFE INSURANCE  
15 COMPANY, and DOES 1 through 10,  
inclusive,  
16 Defendants.

17 Case No. \_\_\_\_\_

18  
19 DECLARATION OF KAREN SOLENICK  
20 IN SUPPORT OF DEFENDANT NEW  
21 YORK LIFE INSURANCE COMPANY'S  
22 NOTICE OF REMOVAL OF ACTION

23  
24 I, Karen Solenick, hereby declare as follows:

25 1. I am a Director of Employee Relations in the Human Resources Department for  
26 New York Life Insurance Company ("NYLIC"), the named Defendant in this action. In this  
position, I have knowledge of the employment applications, work history, and compensation  
levels of NYLIC employees. I have consulted company records regarding Ms. Benigni's work  
history, compensation levels, and the positions in which she expressed an interest. If called to  
testify, I could and would competently testify to the following.

27 2. At the time Ms. Benigni took a leave of absence from NYLIC, the company  
28 records show that her annual salary was \$26,801.

1           3. While the actual starting salary for the positions in which Ms. Benigni appears to  
2 have had interest after she was released by her physician to return to work would depend upon a  
3 number of factors, they would range from approximately \$28,000 to \$34,000 per year.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is  
5 true and correct.

6 Executed this 25<sup>th</sup> day of June 2008 at Sleepy Hollow, New York.

Karen Solenick  
Karen Solenick

1 11 11 11 11 11 11 11 11 20 21 22 23 24 25 26 27

28  
IS &  
P  
AW

1-PA/3712692 2

1

DECL. OF KAREN SOLENICK IN SUPPORT  
OF DEFENDANT'S NOTICE OF REMOVAL  
OF ACTION

# **EXHIBIT 1**

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**  
06/02/2008  
CT Log Number 513483106



**TO:** Michael DeMicco  
New York Life Insurance Company  
51 Madison Avenue  
New York, NY 10010

**RE:** **Process Served in California**

**FOR:** New York Life Insurance Company (Domestic State: NY)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Arelene Benigni, Pltf. vs. New York Life Insurance, et al., Dfts.  
Name discrepancy noted.

**DOCUMENT(S) SERVED:** Summons, Cover Sheet, Complaint

**COURT/AGENCY:** Contra Costa County, Martinez, Superior Court, CA  
Case # C0801088

**NATURE OF ACTION:** Employee Litigation - Discrimination - On the basis of Physical Disability

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 05/30/2008 at 14:25

**APPEARANCE OR ANSWER DUE:** Within 30 days after service

**ATTORNEY(S) / SENDER(S):** Seth R. merrick  
McCormac & Associates  
655 montgomery Street  
Suite 1200  
San Francisco, CA 94111-2630  
415 399 1722

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Priority Overnight, 790025974898

**SIGNED:** C T Corporation System  
**PER:** Nancy Flores  
**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017  
**TELEPHONE:** 213-337-4615

*RECEIVED*  
JUN 3 - 2008  
OFFICE OF THE GENERAL COUNSEL  
LITIGATION SECTION

Page 1 of 1 / WM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

05/16/2008 10:04 4153991733

PAGE 03

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
NEW YORK LIFE INSURANCE, and DOES 1 to 10, inclusive

**RECEIVED**

JUN 3 2008

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
ARELENE BENIGNI

OFFICE OF THE GENERAL COUNSEL  
LITIGATION SECTION

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
APR 21 2008

K. TORRE, CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By *[Signature]*  
Deputy Clerk of My Office

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usar California ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California, County of Contra Costa  
725 Court Street, Martinez, CA 94553

CASE NUMBER: C 08-01088  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Seth R. Merrick (SBN 231607)  
McCormac & Associates

Phone No. (415) 399-1722  
Fax No. (415) 399-1733

655 Montgomery Street, Suite 1200, San Francisco, California 94111-2630  
DATE: APR 23 2008

Clerk, by *[Signature]* Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

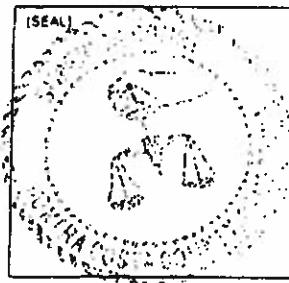
**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): *New York Life Insurance Company*

under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservator)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):

4.  by personal delivery on (date): *5-3-08 7:25pm*



05/16/2008 10:04 4153991733

PAGE 12

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kathleen A. McCormac (State Bar # 159012) McCormac & Associates 655 Montgomery Street, Suite 1200, San Francisco, California 94111-2630 TELEPHONE NO.: (415) 399-1722 FAX NO.: (415) 399-1733		CM-010 FOR COURT USE ONLY
ATTORNEY FOR (Name): ARTHUR PENE BENIGNI, Plaintiff SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS: 725 Court Street, Room 103 MAILING ADDRESS: CITY AND ZIP CODE: Martinez, CA 94553 BRANCH NAME:		FILED APR 21 2008 J. Myovich SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF CONTRA COSTA
CIVIL CASE COVER SHEET		CASE NUMBER: <b>C 08-01088</b>
<input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded to \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)
JUDGE: DEPT:		

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case: Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (U) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)		Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--	---

2. This case  is  is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- Large number of separately represented parties
- Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- Substantial amount of documentary evidence
- Large number of witnesses
- Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):  
 a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): TWO (2)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 18, 2008

Seth R. Merrick

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
MARTINEZ, CA, 94553

BENIGNI VS NEW YORK LIFE INSURANCE

NOTICE OF CASE MANAGEMENT CONFERENCE

CIVMSC08-01088

1. NOTICE: THE CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED FOR:

DATE: 09/22/08 DEPT: 07 TIME: 8:30

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, A BLANK CASE MANAGEMENT CONFERENCE QUESTIONNAIRE, AND A BLANK STIPULATION FORM ARE TO BE SERVED ON OPPOSING PARTIES. ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT OR THEIR ATTORNEY OF RECORD MUST APPEAR.

2. You may stipulate to an earlier Case Management Conference. If all parties agree to an early Case Management Conference, please contact the Court Clerk's Office at (925)957-5794 for Unlimited Civil cases and (925)957-5791 for Limited Civil cases for assignment of an earlier date.

3. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference and to discuss the suitability of this case for the EASE Program, private mediation, binding or non-binding arbitration, and/or use of a Special Master.

4. At any Case Management Conference the court may make pretrial orders including the following:

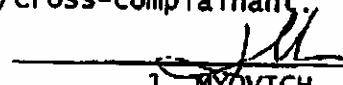
- a. an order establishing a discovery schedule
- b. an order referring the case to arbitration
- c. an order transferring the case to limited jurisdiction
- d. an order dismissing fictitious defendants
- e. an order scheduling exchange of expert witness information
- f. an order setting subsequent conference and the trial date
- g. an order consolidating cases
- h. an order severing trial of cross-complaints or bifurcating issues
- i. an order determining when demurrers and motions will be filed

**SANCTIONS**

If you do not file the Case Management Conference Questionnaire or attend the Case Management Conference or participate effectively in the Conference, the court may impose sanctions (including dismissal of the case and payment of money).

Clerk of the Superior Court of Contra Costa County  
I declare under penalty of perjury that I am not a party to this  
action, and that I delivered or mailed a copy of this notice to the  
person representing the plaintiff/cross-complainant.

Dated: 04/23/08

  
J. MYOVICH, Deputy Clerk

05/16/2008 10:04 4153991733

PAGE 04

1 KATHLEEN A. McCORMAC (#159012)  
 2 SETH R. MERRICK (#231607)  
 3 McCORMAC & ASSOCIATES  
 4 655 Montgomery Street, Suite 1200  
 5 San Francisco, CA 94111  
 6 Tel: (415) 399-1722  
 7 Fax: (415) 399-1733

5 Attorneys for PLAINTIFF  
 6 ARELENE BENIGNI

FILED  
 APR 21 2008

16 TOWNS MARK OF THE COURT  
 SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY  
 BY \_\_\_\_\_ Deputy Clerk

J. Myovich

RECEIVED

JUN 3 2008

OFFICE OF THE CLERK  
 LITIGATION SECTION

SUMMONS ISSUED

PER LOCAL RULE 3.7(a)  
 CASE IS ASSIGNED TO

8 IN THE SUPERIOR COURT OF CALIFORNIA  
 9 IN AND FOR THE COUNTY OF CONTRA COSTA

10 ARELENE BENIGNI,

Case No.: C-08-01088

11 PLAINTIFF.

COMPLAINT FOR:

12 vs.

13 NEW YORK LIFE INSURANCE, and DOES 1  
 to 10, inclusive,

1) DISABILITY DISCRIMINATION:  
 CALIFORNIA FAIR EMPLOYMENT AND  
 HOUSING ACT (CAL. GOV'T CODE  
 §§12940 ET SEQ.);

14 DEFENDANT(S).

2) RETALIATION: CALIFORNIA FAIR  
 EMPLOYMENT AND HOUSING ACT  
 (CAL. GOV'T CODE §§12940 ET SEQ.).

15  
 16 JURY TRIAL DEMANDED

17  
 18

COMPLAINT

21 Now comes ARELENE BENIGNI ("PLAINTIFF") in the above styled action, and files this  
 22 Complaint and further shows the court as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

23  
 24 1. PLAINTIFF is a resident of San Leandro, California.  
 25  
 26 2. NEW YORK LIFE INSURANCE COMPANY. ("DEFENDANT NYLIC") is a  
 27 corporation, has a place of business and is and has been doing business at 51 Madison  
 28

1 Avenue, New York, NY 10010, and is therefore subject to the jurisdiction of this Court.

2 DEFENDANT NYLIC may be served with Summons and Complaint through its  
3 registered agent for service, CT Corporation System, at the following address: 818 West  
4 Seventh Street, Los Angeles, CA 90017.

5

6 3. DEFENDANTS, DOES 1-10, are sued herein under fictitious names. Their true names  
7 and capacities are unknown to PLAINTIFF. PLAINTIFF is informed and believes and  
8 thereon alleges that each of these fictitiously-named DEFENDANTS are responsible in  
9 some way for the occurrences herein alleged and PLAINTIFF'S damages as herein  
10 alleged were caused by DEFENDANTS. When the true names of DOES 1-10 are  
11 ascertained, PLAINTIFF will amend his Complaint by inserting their true names and  
12 capacities herein.

13

14 4. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT NYLIC is  
15 an employer subject to suit under the California Fair Employment and Housing Act  
16 (California Government Code §§12940 et seq., hereinafter referred to as the "FEHA").

17 JURISDICTION AND VENUE

18

19 5. Plaintiff brings this action pursuant and under the provisions of the California Fair  
20 Employment and Housing Act (California Government Code §§12940 et seq.,  
21 hereinafter referred to as the "FEHA").

22 6. Jurisdiction and subject matter in this action are proper as the amount in controversy, as  
23 set forth in the Complaint, exceeds the minimum jurisdictional threshold of this Court.

24 7. Venue is proper as all actions relevant to this Complaint took place in Contra Costa  
25 County, California.

26 8. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT NYLIC is

27

1 an employer subject to suit under FEHA. DEFENDANT NYLIC has at all relevant  
2 times been engaged in an industry in the State of California, and has employed fifteen  
3 (15) or more employees in the current or preceding calendar year, and is therefore  
4 subject to the provisions of FEHA.

5 9. Within the time provided by law, in or about June 2007, PLAINTIFF made a complaint  
6 of disability discrimination with the Equal Opportunity Employment Commission  
7 (hereinafter referred to as the "EEOC") and cross filed with the Department of Fair  
8 Employment and Housing (hereinafter referred to as the "DFEH"). PLAINTIFF  
9 received a "Right to Sue" notice from the DFEH on June 20, 2007.

10 10. Within the time provided by law, in or about January 2008, PLAINTIFF made a  
11 complaint of retaliation with the EEOC and cross-filed with DFEH. PLAINTIFF  
12 received a "Right to Sue" notice from the DFEH on January 17, 2008.

13 **FIRST CAUSE OF ACTION**

14 **Disability Discrimination**

15 (Against DEFENDANT NYLIC In Violation of California Government Code §§12940 et seq.)

16 11. By this reference, PLAINTIFF hereby incorporates paragraphs 1-10 of this document as  
17 if they were set forth within this Cause of Action.

18 12. At all times herein mentioned, the FEHA was in full force and effect and was binding upon  
19 DEFENDANT NYLIC. The FEHA requires DEFENDANT NYLIC to refrain from  
20 discriminating against an employee on the basis of a physical disability, among other  
21 things. PLAINTIFF is a qualified individual with a disability as defined by the FEHA.  
22 Within the time provided by law, PLAINTIFF filed a charge of discrimination with the  
23 DFEH alleging that he had been subjected to discrimination on the basis of her disabilities.

24 13. DEFENDANT NYLIC employed PLAINTIFF from in or about July 1995. At all times

25

26

27

28

1 during PLAINTIFF'S tenure with DEFENDANT NYLIC, PLAINTIFF performed her  
2 duties as an Underwriting Assistant II in an exemplary fashion.

3 14. PLAINTIFF received an injury to her shoulders, back and knees while working for  
4 DEFENDANT NYLIC.

5 15. PLAINTIFF was released by her physician to return to her former employment with  
6 certain restrictions on or about November 22, 2006. Shortly thereafter, PLAINTIFF  
7 requested that DEFENDANT NYLIC return PLAINTIFF to her former position of  
8 employment with reasonable accommodations in accordance with her medical  
9 restrictions. DEFENDANT NYLIC refused to return PLAINTIFF to work.

10 16. On or about May 3, 2007, PLAINTIFF, by and through her attorneys, requested that  
11 DEFENDANT NYLIC return her back to work with reasonable accommodations in  
12 accordance with her medical restrictions.

13 17. From 2006 to present, PLAINTIFF has applied for open positions with DEFENDANT  
14 NYLIC for which she was qualified and physically able to perform.

15 18. To date, PLAINTIFF has not been returned to work.

16 19. DEFENDANT NYLIC willfully and/or with reckless indifference violated the FEHA  
20 and discriminated against PLAINTIFF by failing to engage in the interactive process  
21 with PLAINTIFF.

22 20. DEFENDANT NYLIC willfully and/or with reckless indifference violated the FEHA  
23 and discriminated against PLAINTIFF by failing to make reasonable accommodations to  
24 and for the known or perceived disability of PLAINTIFF.

25 21. DEFENDANT NYLIC willfully and/or with reckless indifference violated the FEHA  
26 and discriminated against PLAINTIFF by refusing to allow PLAINTIFF to return to  
27

28

1 work.

2 22. DEFENDANT NYLIC was aware of PLAINTIFF'S disability, and PLAINTIFF  
3 believes and thereon alleges the substantial, but not the only, factor in DEFENDANT  
4 NYLIC'S decision to refuse to allow PLAINTIFF to work was because of  
5 PLAINTIFF'S disability. Such discrimination has resulted in damage to PLAINTIFF as  
6 alleged herein.

7 23. PLAINTIFF is informed and believes that in addition to the practices enumerated in this  
8 Cause of Action, DEFENDANT NYLIC has engaged in other discriminatory practices  
9 that are not fully known by PLAINTIFF.

10 24. As a direct, foreseeable, and proximate result of DEFENDANT NYLIC'S  
11 discriminatory acts, PLAINTIFF has suffered and continues to suffer substantial losses  
12 and earnings and job benefits, and has suffered and continues to suffer humiliation,  
13 embarrassment, mental and emotional distress, and discomfort, all to PLAINTIFF'S  
14 damage in an amount in excess of the minimum jurisdiction of this court, the precise  
15 amount to be proven at trial.

16 25. Pursuant to the FEHA, PLAINTIFF demands that DEFENDANT NYLIC pay  
17 reasonable attorneys' fees and costs as a part of the cost of this litigation.

18 26. DEFENDANT NYLIC committed the acts herein alleged maliciously, fraudulently, and  
19 oppressively with wrongful intention of injuring PLAINTIFF and acted with an  
20 improper and evil mode amounting to malice, in a conscious disregard for  
21 PLAINTIFF'S rights. The acts taken towards PLAINTIFF were carried out by  
22 managerial employees acting in a despicable, cold, callous and intentional manner in  
23 order to injure and damage PLAINTIFF. As a result of DEFENDANT NYLIC'S  
24  
25  
26  
27  
28

1 discriminatory acts as alleged herein, PLAINTIFF has no claim adequate or complete  
2 remedy of law as DEFENDANT NYLIC continues to engage in said alleged wrongful  
3 practices, therefore, PLAINTIFF requests:

4 (a) That PLAINTIFF be made whole and afforded all benefits attended  
5 thereto that would have been afforded to PLAINTIFF but for said  
6 discrimination; and,

7 (b) That DEFENDANT NYLIC, their agents, successors, employees, and  
8 those acting in concert with DEFENDANT NYLIC are enjoined  
9 permanently from engaging in each of the unlawful practices, policies,  
10 usage and customs set forth herein.

11 **WHEREFORE**, PLAINTIFF prays for judgment as hereinafter set forth.

12 **SECOND CAUSE OF ACTION**

13 **Retaliation**

14 (Against DEFENDANT NYLIC in Violation of California Government Code §§12940 *et seq.*)

15 27. By this reference, PLAINTIFF hereby incorporates paragraphs 1-26 of this document as  
16 if they were set forth within this Cause of Action.

17 28. Since she filed her charge of Discrimination with the EEOC and DFEH, PLAINTIFF  
18 has applied for open positions with DEFENDANT NYLIC for which she was qualified  
19 and physically able to perform. DEFENDANT NYLIC refused to place her in one of the  
20 open positions.

21 29. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT NYLIC  
22 refused to return PLAINTIFF to work for DEFENDANT NYLIC in an open position  
23 because, among other things, PLAINTIFF engaged in protected activities.

24 30. PLAINTIFF is informed and believes that in addition to the practices enumerated in this

25

26

27

28

1 Cause of Action, DEFENDANT NYLIC has engaged in other retaliatory practices that  
2 are not fully known by PLAINTIFF.

3 31. As a direct, foreseeable, and proximate result of DEFENDANT NYLIC'S retaliatory  
4 acts, PLAINTIFF has suffered and continues to suffer substantial losses and earnings  
5 and job benefits, and has suffered and continues to suffer humiliation, embarrassment,  
6 mental and emotional distress, and discomfort, all to PLAINTIFF'S damage in an  
7 amount in excess of the minimum jurisdiction of this court, the precise amount to be  
8 proven at trial.

9 32. Pursuant to the FEHA, PLAINTIFF demands that DEFENDANT NYLIC pay  
10 reasonable attorneys' fees and costs as a part of the cost of this litigation.

11 33. DEFENDANT NYLIC committed the acts herein alleged maliciously, fraudulently, and  
12 oppressively with wrongful intention of injuring PLAINTIFF and acted with an  
13 improper and evil mode amounting to malice, in a conscious disregard for  
14 PLAINTIFF'S rights. The acts taken towards PLAINTIFF were carried out by  
15 managerial employees acting in a despicable, cold, callous and intentional manner in  
16 order to injure and damage PLAINTIFF. As a result of DEFENDANT NYLIC'S  
17 discriminatory acts as alleged herein, PLAINTIFF has no claim adequate or complete  
18 remedy of law as DEFENDANT NYLIC continues to engage in said alleged wrongful  
19 practices, therefore, PLAINTIFF requests:

20 (a) That PLAINTIFF be made whole and afforded all benefits attended  
21 thereto that would have been afforded to PLAINTIFF but for said  
22 discrimination; and,  
23 (b) That DEFENDANT NYLIC, their agents, successors, employees, and  
24

those acting in concert with DEFENDANT NYLIC be enjoined permanently from engaging in each of the unlawful practices, policies, usage and customs set forth herein.

**WHEREFORE, PLAINTIFF** prays for judgment as hereinafter set forth

## PRAYER FOR RELIEF

**WHEREFORE, PLAINTIFF makes the following demand:**

- (a) That process be issued and served as provided by law, requiring DEFENDANT NYLIC to appear and answer or face judgment;
- (b) That PLAINTIFF have and recover a judgment against DEFENDANT NYLIC in an amount to be determined at trial as general, special, actual, compensatory and/or nominal damages for violation of the FEHA (California Government Code §§12940 et seq.);
- (c) That PLAINTIFF have and recover a judgment against DEFENDANT NYLIC in an amount to be determined at trial for expenses of this litigation, including, but not limited to, reasonable attorneys' fees, costs and pre and post judgment interest; and
- (d) That PLAINTIFF has such other relief, as this Court deems just and appropriate.
- (e) That PLAINTIFF have and recover a judgment against DEFENDANT NYLIC for punitive damages in an amount to be determined at trial sufficient to punish, penalize and/or deter DEFENDANT.

**PLAINTIFF DEMANDS TRIAL BY JURY**

Dated: April 18, 2008

McCORMAC & ASSOCIATES

SETH R. MERRICK  
Attorney for PLAINTIFF

Arrow

Page 1 of 1

FROM: Wendy Mayorga (213)337-4616  
CT - Los Angeles SOP Team  
818 West Seventh Street

Los Angeles, CA 90017

TO: Michael DeMicco (212)576-4452  
New York Life Insurance Company  
51 Madison Avenue

New York, NY 10010

Ref: SOP/04 13900/513463106/Wendy Mayorga



FedEx Revenue Barcode

CAD#: 8318649  
SHIP DATE: 02JUN08  
WEIGHT: 1 LB



DELIVERY ADDRESS (FedEx-EDR)

PRIORITY OVERNIGHT

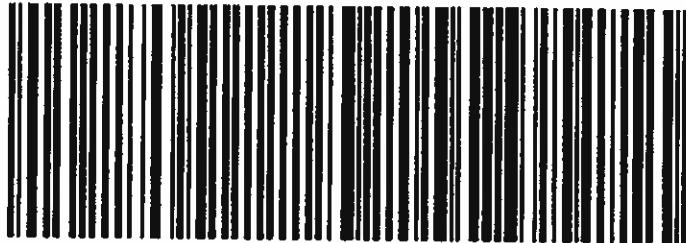
TRK # 7900 2567 4898 FORM  
0201

EWR

10010 -NY-US

06 NBPA

TUE  
A1  
Deliver by:  
03JUN08



CLS120707

# **EXHIBIT 2**

1 MELINDA S. RIECHERT, State Bar No. 65504  
 2 MORGAN, LEWIS & BOCKIUS LLP  
 3 2 Palo Alto Square  
 4 3000 El Camino Real, Suite 700  
 5 Palo Alto, CA 94306-2122  
 6 Tel: 650.843.4000  
 7 Fax: 650.843.4001

FILED

2008 JUN 20 P 1:40

K. TORRE, CLERK OF THE SUPERIOR COURT  
 COUNTY OF CONTRA COSTA, CALIF.  
 BY J. LAVOVICH, DEPUTY CLERK

5 SACHA M. STEENHOEK, State Bar No. 253743  
 6 MORGAN, LEWIS & BOCKIUS LLP  
 7 One Market, Spear Street Tower  
 8 San Francisco, CA 94105-1126  
 9 Tel: 415.442.1000  
 10 Fax: 415.442.1001

11 Attorney for Defendants  
 12 NEW YORK LIFE INSURANCE COMPANY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 IN AND FOR THE COUNTY OF CONTRA COSTA

15 ARELENE BENIGNI,  
 16 Plaintiff,  
 17 vs.  
 18 NEW YORK LIFE INSURANCE  
 19 COMPANY, and DOES 1 through 10,  
 20 inclusive;  
 21 Defendants.

Case No. C-08-01088

DEFENDANT NEW YORK LIFE  
 INSURANCE COMPANY'S ANSWER TO  
 PLAINTIFF ARELENE BENIGNI'S  
 UNVERIFIED COMPLAINT

Complaint filed: April 21, 2008  
 Trial Date: None

BY FAX

22 Defendant New York Life Insurance Company ("Defendant") hereby answers the  
 23 unverified Complaint of Plaintiff Arelene Benigni ("Plaintiff") as follows:

24 Pursuant to California Code of Civil Procedure §431.30(d), Defendant denies generally  
 25 each and every material allegation contained in Plaintiff's unverified Complaint, and each and  
 26 every cause of action contained therein, and further denies that Plaintiff has been damaged in any  
 27 sum whatsoever or that she has been damaged by any act or omission of Defendant, its agents,  
 28 representatives, and/or employees.

WHEREFORE, Defendant asserts the following affirmative defenses and prays for

I-SF/7714810.2

Case No. C-08-01088

DEFENDANT NEW YORK LIFE INSURANCE COMPANY'S ANSWER TO PLAINTIFF ARELENE  
 BENIGNI'S UNVERIFIED COMPLAINT

1 judgment as set forth below:

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State a Cause of Action)**

4 1. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 5 of action therein, Defendant alleges that Plaintiff has failed to state a cause of action upon which  
 6 relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 **(Waiver and Estoppel)**

9 2. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 10 of action therein, Defendant alleges that Plaintiff by her express and implied actions has waived  
 11 and is estopped from asserting, in whole or in part, any of the causes of action upon which she  
 12 seeks relief.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 3. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 16 of action therein, Defendant alleges that each cause of action is barred by the doctrine of unclean  
 17 hands.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Workers' Compensation Exclusive Remedy)**

20 4. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 21 of action therein, Defendant alleges that if Plaintiff sustained any injuries and/or emotional  
 22 distress by reason of the allegations in the Complaint, which allegations are denied, Plaintiff's  
 23 exclusive remedy for any such damages is governed by the California Workers' Compensation  
 24 Act statutes. Cal. Labor Code Sections 3200, et seq.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 **(Failure to Exhaust Administrative Remedies)**

27 5. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 28 of action therein, Defendant alleges that Plaintiff's statutory claims are barred in whole or in part  
 1-SF/7714810.2

1 to the extent Plaintiff has failed timely and/or properly to exhaust her administrative remedies  
 2 with the California Department of Fair Employment and Housing ("DFEH") and are barred in  
 3 whole or in part to the extent her alleged causes of action exceed or are outside the scope of any  
 4 administrative charge(s) filed by Plaintiff with the DFEH. Government Code §§ 12940,  
 5 12965(b); *Okoli v. Lockheed Technical Operations Co.*, (1995) 36 Cal. App. 4th 1607, 1613.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(After-Acquired Evidence)**

8 6. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 9 of action therein, Defendant alleges that, to the extent during the course of this litigation  
 10 Defendant acquires any evidence of wrongdoing by Plaintiff, which wrongdoing would have  
 11 materially affected the terms and conditions of Plaintiff's employment or would have resulted in  
 12 Plaintiff either being demoted, disciplined, or terminated, such after-acquired evidence bars  
 13 Plaintiff from establishing liability and/or from recovering damages and/or shall reduce her  
 14 recovery, if any, for such claims as provided by law.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate)**

17 7. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 18 of action therein, Defendant alleges that if Plaintiff sustained damages by reason of the  
 19 allegations in the Complaint, which allegations are denied, then Plaintiff may not recover for such  
 20 damages because, by her own acts and omissions, Plaintiff has failed to mitigate properly those  
 21 damages.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Mixed Motive)**

24 8. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 25 of action therein, Defendant alleges that to the extent that unlawful reasons were motivating  
 26 factors as to any action by Defendant alleged in the Complaint, which Defendant denies,  
 27 legitimate, non-discriminatory reasons, standing alone, would have induced Defendants to make  
 28 the same employment decisions.

**NINTH AFFIRMATIVE DEFENSE****(Undue Hardship)**

9. As a separate and affirmative defense to Plaintiff's Complaint, and to each cause  
 4 of action therein, Defendant alleges that, to the extent Plaintiff sought and/or was otherwise  
 5 eligible for an accommodation, said accommodation would have caused an undue hardship on  
 6 Defendant.

**TENTH AFFIRMATIVE DEFENSE****(Constitutional Limit on Punitive Damages)**

9. 10. Defendants allege that Plaintiff's claim for punitive damages is barred by the  
 10 Contract Clause (Article I, Section 10, Clause 1), the Due Process Clause (Fourteenth  
 11 Amendment, Section 1), and the Excessive Fines Clause (Eighth Amendment) of the United  
 12 States Constitution, and the corresponding provisions of the State of California.

14 WHEREFORE, Defendant NEW YORK LIFE INSURANCE COMPANY prays for  
 15 the following:

- 16 1. That Plaintiff take nothing in this action;
- 17 2. That judgment be entered in favor of Defendant and against Plaintiff;
- 18 3. That costs of suit be awarded to Defendant;
- 19 4. That attorneys fees be awarded to Defendant; and
- 20 5. For such other and further relief in favor of Defendant as the Court deems just and  
 21 proper.

23 Dated: June 20, 2008

MORGAN, LEWIS & BOCKIUS LLP

25 By Melinda S. Riechert  
 26 Melinda S. Riechert

27 Attorney for Defendant  
 28 NEW YORK LIFE INSURANCE  
 COMPANY

**PROOF OF SERVICE**

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market Street, Spear Street Tower, San Francisco, California 94105.

On June 20, 2008, I served the within document(s):

**DEFENDANT NEW YORK LIFE INSURANCE COMPANY'S  
ANSWER TO PLAINTIFF ARELENE BENIGNI'S  
UNVERIFIED COMPLAINT**



by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for overnight delivery.

Kathleen A. McCormac, Esq.  
McCormac & Associates  
655 Montgomery Street, Suite 1200  
San Francisco, CA 94111

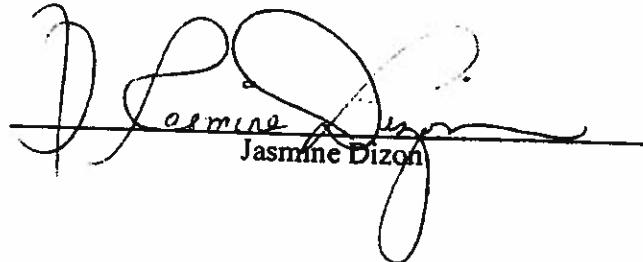
Attorneys for Plaintiff  
Arelene Benigni

**VIA FEDERAL EXPRESS**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 20, 2008, at San Francisco, California.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.



Jasmine Dizon